

#### § 1309.4

location and moved to a site for use by a Head Start grantee to carry out a Head Start program.

*Purchase* means to buy an existing facility, either outright or through a mortgage. Purchase also refers to an approved use of Head Start funds to continue paying the cost of purchasing facilities begun after December 31, 1986 as permitted by the Head Start Act and by § 1309.2.

*Real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

*Responsible HHS official* means the official who is authorized to make the grant of financial assistance to operate a Head Start program, or such official's designee.

*Suitable facility* means a facility which is large enough to meet the foreseeable needs of the Head Start program and which complies with local licensing and code requirements and the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23219, May 1, 2003]

#### § 1309.4 Eligibility—Construction.

Before submitting an application under § 1309.10 for construction of a facility, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe; or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease in the service area is suitable for use by the Head Start program. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported whenever possible by a written statement from a licensed real estate professional in the grantee's service area.

[68 FR 23219, May 1, 2003]

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#### § 1309.5 Eligibility—Major Renovations.

Before submitting an application under § 1309.10, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe, or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit or prevent the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable or could be made suitable without major renovation. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported, whenever possible, by written statement from a licensed real estate professional in the grantee's service area.

[68 FR 23220, May 1, 2003]

### Subpart B—Application Procedures

#### § 1309.10 Applications for the purchase, construction and major renovation of facilities.

A grantee which proposes to use grant funds to purchase a facility, or a grantee found eligible under § 1309.4 to apply for funds to construct a facility, or § 1309.5 to undertake major renovation of a facility, including facilities purchased for that purpose, must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that acquisition or major renovation of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, early education programs, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility to be acquired, including information on the size and type of structure, the number and a description of the rooms, and the lot on which the building is located or will be located (including the space available for a playground and for parking). If incidental alterations and renovations or major renovations are being proposed to make a facility suitable to carry out the Head Start program, a description of the renovations, and the plans and specifications submitted, must also describe the facility as it will be after renovations are complete. In the case of a proposed major renovation or construction project, the applicant must submit a written estimate of all costs associated with the project. An architect or engineer must prepare the written estimate.

(c) The cost comparison described in § 1309.11.

(d) The intended use of the facility proposed for acquisition or major renovation, including information showing the percentage of floor space that will be used as a Head Start center or a direct support facility for a Head Start program. As provided under section 644(f)(2)(D) of the Act, in the case of a request regarding funding for the continuing purchase of a facility, the application must include information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program.

(e) An assurance that the facility complies (or will comply when constructed or after completion of the renovations described in paragraph (b) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee will also assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(f) If the grantee proposing to purchase a facility without undertaking major renovations is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a

lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the use of Head Start funds to continue purchase of a facility is unable to provide such statements based on circumstances which existed at the time the purchase began, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(g) The terms of any proposed or existing loan(s) related to acquisition or major renovation of facility and the repayment plans (detailing balloon payments or other unconventional terms, if any), and information on all other sources of funding of the acquisition or major renovations, including any restrictions or conditions imposed by other funding sources.

(h) A statement of the effect that the acquisition or major renovation of the facility would have on the grantee's meeting the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(i) Certification by a licensed engineer or architect that the building proposed to be purchased or for which Head Start funds will be used to continue to purchase is structurally sound and safe for use as a Head Start facility. The applicant must certify that, upon completion of major renovation to a facility or construction of a facility, that an inspection by a licensed engineer or architect will be conducted to determine that the facility is structurally sound and safe for use as a Head Start facility.

(j) A statement of the effect that the acquisition or major renovation of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the acquisition or major renovation, such

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as the down payment, the cost of necessary renovation, loan fees and related expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(k) A proposed schedule for acquisition, renovation and occupancy of the facility.

(l) Reasonable assurance that the applicant will obtain, or has obtained, a fee simple or such other estate or interest in the site of the facility to assure undisturbed use and possession for the purpose of operating a Head Start program. A grantee seeking funding for acquisition or *major renovation* of a facility that is sited on land not owned by the grantee must establish in its application that there is no other feasible alternative to acquisition or *leasing* of the facility for providing a suitable facility appropriate to the needs of the Head Start program. If the grantee proposes to acquire a facility without also purchasing the land on which the facility is or will be situated, the application must include a copy of the existing or proposed land lease or other document which protects the Federal interest in the facility and ensures undisturbed use and possession of the facility by the grantee, or other organization designated by ACF, for the purpose of operating a Head Start program or other program designated by ACF. A grantee applying for funding to make major renovations to a facility it does not own must include with its application written permission from the owner of the building projected to undergo major renovation and a copy of the lease or proposed lease for the facility. A grantee receiving funds for acquisition or the major renovation of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of those permanent grant-supported improvements.

(m) An assessment of the impact of the proposed project on the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and its implementing regulations (40 CFR parts 1500 through 1508), as well as a report showing the results of tests for en-

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vironmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(n) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.* and 49 CFR part 24), and information about the costs that may be incurred due to compliance with this Act.

(o) A statement of the share of the cost of acquisition or major renovation that will be paid with grant funds.

(p) For a grantee seeking approval of the use of Head Start funds to continue purchase of a facility, a statement of the extent to which it has attempted to comply and will be able to comply with the provision of § 1309.22.

(q) Such additional information as the responsible HHS official may require.

[68 FR 23220, May 1, 2003]

### **§ 1309.11 Cost comparison for purchase, construction and major renovation of facilities.**

(a) A grantee proposing to acquire or undertake a major renovation of a facility must submit a detailed estimate of the costs of the proposed activity and compare the costs of the proposed activity as provided under paragraph (c) of this section and provide any additional information requested by the responsible HHS official.

(b) All costs of acquisition, renovation and ownership must be identified, including, but not limited to, professional fees, purchase of the facility to be renovated, renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased, or which the grantee will continue to purchase with Head Start funds or to receive major renovation, made by a professional appraiser, must be included.

(c)(1) Grantees proposing to purchase a facility, without requesting funds for